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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 914

HACEL W. NALDER, BANKRUPT,

Petitioner,

vs.

THE FEDERAL LAND BANK OF BERKELEY, A CORPORATION, AND FEDERAL FARM MORTGAGE CORPORATION, A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND SUPPORTING BRIEF.

J. D. SKEEN,
E. J. SKEEN,
Counsel for Petitioners.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Supporting brief	5

Table of Cases Cited.

Adair v. *Bank of America National Trust & Savings Association*, 303 U. S. 350, 82 L. Ed. 889	7
John Hancock Mutual Life Insurance Co. v. *Bartels*, 308 U. S. 180, 84 L. Ed. 176	2, 6, 7
Kalb v. *Feuerstein*, 308 U. S. 433, 84 L. Ed. 370	7
Louisville Joint Stock Land Bank v. *Radford*, 295 U. S. 555, 79 L. Ed. 1593	6
In re Monjon, 113 F. (2d) 535	3, 6
Union Joint Stock Land Bank v. *Byerly*, 310 U. S. 1, 84 L. Ed. 1041	7
Wright v. *Mountain Trust Bank*, 300 U. S. 440, 81 L. Ed. 736	6
Wright v. *Union Central Life Insurance Company*, — U. S. —, 61 S. Ct. 196, Advance Sheet, 85 L. Ed. 166	2, 6, 7

Statutes Cited.

Bankruptcy Act, Section 75, subsection (s), 11 U. S. C. A., section 203 (s)	1, 2, 6
Judicial Code, section 240, amended, 28 U. S. C. A. section 347	5

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The petition of Hacel W. Nalder, bankrupt, respectfully shows to the court:

That he filed his petition for relief under Section 75 of the Bankruptcy Act, 11 U. S. C. A., Section 203, and being unable to procure the acceptance of a composition and extension proposal, filed an amended petition under Section 75 (s) of the Act. The matter was referred to a conciliation commissioner, the property appraised, rent fixed, and a stay order entered. The debtor being unable to pay the amount of the rent fixed, the Federal Land Bank of Berkeley and the Federal Farm Mortgage Corporation, mortgagees,

filed a petition in the district court for the appointment of a trustee and for the sale or other disposition of the debtor's property under the provisions of Section 75 (s) (3) of the Act. A trustee was appointed and the property ordered sold. The trustee's report stated that the farm property was worth $7,066.00 and the mortgage indebtedness thereon aggregated $7,004.17. Thereupon the creditors filed a petition reciting that the encumbrances exceeded the value of the property and moved for an order abandoning it as burdensome to the estate. After hearing the district court denied the motion.

The Federal Land Bank and the Federal Farm Mortgage Corporation appealed. On the 2nd day of January, 1941, the United States Circuit Court of Appeals, for the Tenth Circuit, handed down its opinion reversing the district court. The opinion is reported in 116 F. (2d) 1004.

Two important questions are presented by this petition:

(1) Has the district court authority, under Section 75 (s) (3) to abandon property as burdensome, if the value of farm property is not substantially in excess of the mortgage indebtedness?

(2) Can the court lawfully deny the debtor the right of redemption within 90 days of the date of the sale, regardless of what has gone before?

That the writ should be granted for the following reasons:

1. That the decision of the Circuit Court of Appeals of the Tenth Circuit is not in accord with the decisions of this Court in the cases of:

John Hancock Mutual Life Insurance Co. v. *Bartels*, 308 U. S. 180, 84 L. Ed. 176;

Wright v. *Union Central Life Insurance Co.*, — U. S. —, 61 S. Ct. 196, advance sheet, 85 L. Ed. 166.

2. That the decision of the Circuit Court of Appeals of the Tenth Circuit is in conflict with the decision of the Circuit Court of Appeals of the Seventh Circuit in:

In re Monjon, 113 F. (2d) 535.

3. An important question of Federal procedure has been decided, to-wit: The right of abandonment of the property under Section 75 (s) of the Bankruptcy Act, which it is thought is contrary to the provisions of the statute, and the decisions of this Court.

4. That a substantial right, to-wit: The right of redemption, has been denied the petitioners.

Wherefore, petitioner prays for an order of this Court granting a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit in said matter.

J. D. SKEEN,
E. J. SKEEN,
Attorneys for Petitioners.